



STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

Agricultural Labor Conditions Rules, 7 CCR 1103-15 (2022), as proposed October 29, 2021; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.

I. BASIS: The Director (“Director”) of the Division of Labor Standards and Statistics (“Division”) has authority to adopt rules and regulations on wage-and-hour and workplace conditions, under the authority listed in Part II, which is incorporated into Part I as well.

II. SPECIFIC STATUTORY AUTHORITY: These Rules are issued under the authority, and as enforcement, of Articles 1, 2, 4, 6, 12, and 13.5 of C.R.S. Title 8 (2022), including but not limited to statutes listed in the Agricultural Labor Conditions Rules, R. 1.1 and App’x A (both incorporated into this Part II), and are intended to be consistent with the State Administrative Procedures Act, C.R.S. § 24-4-101, et seq.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows. The “Agricultural Labor Conditions Rules” is a new rule set implementing requirements of the Agricultural Labor Rights and Responsibilities Act (“ALRRA”), SB21-87 (enacted June 25, 2021). ALRRA requires Division rulemaking to provide agricultural workers (a) protection from heat illness and injury, and (b) access to key service providers.¹ Below are findings and explanations as to the the nature of, and basis for, the rules proposed to satisfy this statutory mandate.

A. Rules 1 and 2: Statement of Purpose, Authority, and Construction; and Definitions.

Rule 1 details the relationship of these rules to ALRRA and other relevant statutes, and the Division’s intent for these Rules to remain in effect to the maximum extent possible if a portion is held invalid. It also identifies other relevant labor laws applicable to agriculture, such as minimum wage, overtime, and rest and meal period, requirements in ALRRA and in the Colorado Overtime and Minimum Pay Standards (COMPS) Order, 7 CCR 1103-1.

Rule 2 defines key terms: some are statutory (e.g., Rule 2.2 and 2.3’s incorporation of ALRRA’s definitions of “agricultural employee,” “agricultural worker,” and “agricultural employer”), or from other rule sets (e.g., “meal period” and “rest period” are as defined in COMPS Order Rules 5.1-5.2); others are specific to these rules (e.g., “potable water” that must be “provided” to employees as part of heat protection, and that employers’ obligations to “provide” items, such as certain service provider access requirements, means free of charge and unconditionally).

B. Rule 3: Heat Illness and Injury Protection.

Rule 3 covers employer obligations to protect employees from heat-related illness and injury. ALRRA requires:

rules that require agricultural employers to protect agricultural workers from heat-related stress illnesses and injuries when the outside temperatures reach eighty degrees or higher, with discretion to adjust requirements based on environmental factors, exposure time, acclimatization, and metabolic demands of the job as set forth in the federal Department of Health and Human Services Centers for Disease Control and Prevention National Institute for Occupational Safety and Health [NIOSH] 2016 Revised Publication: Criteria For A Recommended Standard, Occupational Exposure To Heat And Hot Environments [“the NIOSH publication”].²

¹ Other ALRRA requirements (e.g., minimum wage, overtime pay, and retaliation protections) are addressed in other rule sets, including but not limited to the Colorado Overtime and Minimum Pay Standards (COMPS) Order, 7 CCR 1103-1, and Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules (“Colorado WARNING Rules”), 7 CCR 1103-11.

² C.R.S. § 8-13.5-203(1), citing [NIOSH Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments](#) (“NIOSH publication”). By Jacklitsch B, Williams WJ, et al. U.S. Dep’t of Health and Human Services, Centers for Disease Control & Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication 2016-106.

Pursuant to this statutory mandate, the heat rules apply where a worksite is 80 degrees fahrenheit or higher, with additional requirements applicable to increased risk conditions arising from environmental or other factors.

In crafting heat safety rules, the first rule set of this kind in Colorado, the Division looked to other states with existing standards (Washington,³ Oregon⁴, and California⁵), as well as federal guidance (the NIOSH publication, and Occupational Safety and Health Administration (OSHA) publications). Among published guidance, the Division particularly looked to the recommendations, findings, and evidence in the NIOSH publication, since (in the above block quote) ALRRA expressly mandates that aspects of the Division’s heat rulemaking base on factors “as set forth in” that specific publication, which the Division also independently finds to be a valuable, credible source. The rules also emphasize key safety needs for work in hot environments identified in OSHA’s “Water. Shade. Rest.”⁶ as well as training and safety procedures to prevent heat illness and injury, and to respond to employee symptoms or medical attention needs.⁷

1. Rule 3.1: Application.

Rule 3.1 identifies when the basic heat protection requirements apply—a threshold temperature of 80 degrees fahrenheit—and how to determine whether the temperature triggers those requirements, based on the type of worksite.

For outdoor worksites (e.g., crop fields), employers must use a forecast from no later than noon the prior day, with discretion as to what forecast to use, as long as it is from a reliable source, as defined in the rule. A forecast, rather than an actual temperature, is used: (1) in recognition of possible difficulty in temperature measurement across large areas, and (2) for employers to be able to ascertain obligations before a workday begins. However, employers at *all* worksites must comply with heat rules to the maximum extent possible if they become aware of changed conditions during the workday.

These rules also apply to indoor worksites with temperatures above the threshold triggering heat protections. High temperatures in some indoor agriculture warrant heat protections no less than outdoor agriculture. For example:

A big problem is with the working conditions in the heat. Some of the flowers are grown in greenhouses that were originally for tomatoes and needed high heat. If it is 100 degrees outside, then it is 20 to 30 degrees hotter inside. The greenhouses are very large and have just three exits, so the exits can be far from where you are working. We can go outside to get a little fresh air, but it is open land and there are rattlesnakes all around, so we are no[t] comfortable going out there. There are sufficient bathrooms ... perhaps a kilometer away.⁸

Because indoor worksites lack the temperature-measuring concerns of outdoor worksites, and forecasts may not reflect indoor conditions, employers will have to apply heat protections based on the indoor worksite’s actual temperature (which can consider historic temperature data and/or predicted indoor temperature based on outdoor temperature) *or* reasonably expected temperature (e.g., when, for growing needs, employers affect indoor temperature and/or other conditions).

The rule also covers what to do where a forecast cannot be used if the locality lacks a published forecast or, such as for some open range workers, the exact location of an employee is unknown, or an employer cannot communicate with an employee. In such cases, employers may use a forecast for the nearest locality, or a monthly average for the area. If using a monthly average, employers must apply heat protection rules based on the average temperature reaching roughly 95% of the applicable threshold (76 rather than 80 degrees for most rules, and 90 rather than 95 degrees for increased risk conditions), to account for likely conditions while providing adequate protections for days that may exceed that average.

³ Wash. Admin. Code. § 296-307-097 (2021).

⁴ Or. Admin. R. 437-002-0155; 437-004-1130 (2021).

⁵ Cal. Code Regs. tit. 8, § 3395 (2021).

⁶ Occupational Safety and Health Administration, Safety and Health Topics - Heat - Prevention - Water. Rest. Shade., <https://www.osha.gov/heat-exposure/water-rest-shade> (last Nov. 30, 2021).

⁷ See DHHS (NIOSH) Publication No. 2016-106 at 10–11 (recommending implementation of heat safety training program); Prudhomme, J.C., & Neidhardt, A. (2006). Memorandum: Cal/OSHA Investigation of Heat Related Illnesses. California Division of Occupational Safety and Health, at 3–4, <https://www.dir.ca.gov/dosh/heatillnessinvestigations-2005.pdf> (California OSHA study of work-related heat injuries, observing commonality of non-reporting symptoms, warranting training on heat illness symptoms).

⁸ Written comment by American Friends Service Cmte. (statement of 15-year agricultural worker, submitted by Milena Castaneda), Oct. 15, 2021. In the course of its work, the Division has also been made aware of the existence of indoor temperatures above 100 degrees in certain marijuana growing.

2. Rule 3.2: Drinking Water.

Rule 3.2 describes employers' obligation to provide employees cool, potable water, and sufficient opportunity to drink it during shifts. Employees working in high-heat conditions and expending substantial physical effort in their work, like many farmworkers, are prone to sweat substantially, putting them at risk of elevated body temperatures and electrolyte depletion caused by dehydration, which can cause significant health problems.⁹ Other states with water requirements for agricultural labor require 32 ounces per hour,¹⁰ which is consistent with recommendations in the NIOSH publication as well.¹¹ Rule 3.2 follows this consensus, requiring 32 ounces per hour of drinking water. Water serves the purpose of these rules as mandated by ALRRA ("to protect agricultural workers from heat-related stress illnesses and injuries"¹²) only if safely drinkable, so the rules require that water be potable and provided by a sanitary method. Employers have discretion on how to provide, replenish, and keep the required cool temperature for water to serve its heat-protection purpose — not above 60 degrees — such as with coolers, chilled water bottles, taps, etc.

To the extent that these requirements cannot be fully complied with certain workers — e.g., where a range worker is away from their housing all day cannot carry 32 ounces per hour of water while working — employers must ensure as much compliance as they can, including by replenishing water supplies at the same time livestock food and water supplies are replenished, or by measures allowing employees to obtain potable water from other sources when needed.

3. Rule 3.3: Shade

Rule 3.3 requires that employers provide employees access to adequate shade during rest and meal periods. Access to cool space for rest is a recommended way to control heat stress by lessening an employee's length of exposure to heat.¹³ While shade may be provided through any means, artificial (e.g., indoor space, pergolas) or natural (e.g., under a tree), it must meet other specifications — that it is genuinely accessible (near the worksite, and with enough space for employees on breaks to sit in), and not an unhealthy or unsanitary space (e.g., not next to garbage, rotted items, or exhaust-/heat-emitting machinery, nor in an unventilated room). Where it is not possible or safe to provide shade, employers must provide equivalent cooling measures, such as air-conditioned space. Employers must authorize and permit range workers to take rest periods allowing them to cool down, and seek shade during these periods to the extent possible.

4. Rule 3.4: Increased Risk Conditions.

ALRRA authorizes Division heat protection rules to consider relevant factors other than just temperature, including "environmental factors, exposure time, acclimatization, and metabolic demands of the job."¹⁴ Rule 3.4 identifies "increased risk conditions" that, combined with the 80-degree threshold temperature, may increase risk to workers. When increased risk conditions are present or anticipated, the rules require the following additional safety measures: ensuring employees work no longer than two hours without rest, to lessen consecutive heat exposure time; and conducting a pre-shift briefing about heat safety procedures to ensure the information is reiterated when most needed. Employers may satisfy the rest break requirements by spacing other required rest periods and meal periods, but must provide additional

⁹ DHHS (NIOSH) Publication No. 2016-106 at 29.

¹⁰ See Wash. Admin. Code. § 296-307-09740(1) ("Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour."); Or. Admin. R. 437-002-0155(4)(a); 437-004-1130 (4)(a) ("Employers must supply each employee enough water to enable them to consume 32 ounces per hour."); Cal. Code Regs. tit. 8, § 3395(c) ("Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift.").

¹¹ DHHS (NIOSH) Publication No. 2016-106 at 9, 82, & 104 T.1 (recommending for "workers that have been in the heat for up to 2 hours and involved in moderate work activities to drink a cup of water (about 8 oz.) every 15 to 20 minutes" (p.9), but with that quantity as just an "example" (p.82), because higher than moderate effort, or higher heat, requires more water (p.104 T.1)).

¹² Written comment by Towards Justice, "SB87 Comments - Heat Protections for Agricultural Workers" ("Towards Justice 10/19/21 Comment"), Oct. 19, 2021, at 4, n.19 (citing 19 Shipley et al., Heat is killing workers in the U.S. — and there are no federal rules to protect them (<https://www.npr.org/2021/08/17/1026154042/hundreds-of-workers-have-died-from-heat-in-the-last-decade-and-its-getting-worse>); Vose RS et al. 2017: Temperature changes in the United States. In: Climate Science Special Report: Fourth National Climate Assessment, Vol. I. U.S. Global Change Research Program, Washington, DC (<https://science2017.globalchange.gov/>)).

¹³ DHHS (NIOSH) Publication No. 2016-106 at 75.

¹⁴ C.R.S. § 8-13.5-203(1).

break time to the extent that these rest and meal periods do not cover the requirement; in workdays between eight and 12 hours, employers can accomplish this by spacing existing rest and meal periods, and adding one extra 10-minute break.

Two of the increased risk conditions — high heat (95 degrees fahrenheit or higher) and unhealthy air quality — would apply to everyone at a worksite, and are assessed using the same forecast or temperature measurement standards as for determining whether the 80-degree threshold is met. Extremely high heat magnifies risks present under heat conditions; one study of worker heat deaths showed that most occurred on dates where the heat was unusually high compared to historical averages for that date,¹⁵ and NIOSH specifically recommends more rest time as temperatures rise, including specifically when the temperature in which heavy work is being performed reaches 95 degrees.¹⁶

Unsafe air quality is linked to lung and cardiovascular health problems, and its effects are magnified in conditions that are common in agricultural work: outdoor work and/or long hours.¹⁷ Heat itself worsens air quality, both by trapping pollutants, and by drying our vegetation) increasing the risk of smoke caused by wildfires.¹⁸ Study data show “synergistic effects of heat and air pollution exposure” on health outcomes, inclusion of poor air quality as a compounding factor to heat in these rules is warranted.¹⁹ The NIOSH publication recommends heat standards calibrated to “prevent harmful effects from interactions between heat and toxic chemical and physical agents,”²⁰ based on studies showing multiple ways that working in hot conditions increases risks from toxic exposure — including from both skin absorption and inhalation:

Although heat rashes are not dangerous in themselves, each can impair areas of skin and reduce sweating that reduces evaporative heat loss and impacts thermoregulation. Wet and/or damaged skin can also absorb toxic chemicals more readily than dry, unbroken skin.²¹

[E]xposure to heat exacerbates chemical absorption and toxicity ... [C]hanges to the body’s core temperature can alter absorption, distribution, metabolism, and excretion of the toxicants. Increases in respiration can lead to further toxicant exposure through inhalation, whereas increases in sweat and skin blood flow can lead to more efficient transcutaneous absorption of some toxicants.²²

Based on the above, the Division finds that poor air quality is an “increased risk condition” when already working in hot weather, justifying its inclusion as an increased risk condition triggering increased worker protections.²³

Especially long workdays, of 12 hours or more, mean longer heat exposure, and accordingly higher risk, warranting the more frequent breaks, and additional informing of workers of available heat protections, applicable in

¹⁵ Towards Justice 10/19/21 Comment at 4, n. 19, citing Shipley et al. and Vose et al. (cited above).

¹⁶ DHHS (NIOSH) Publication No. 2016-106 at 76, T.6-2.

¹⁷ Towards Justice 10/19/21 Comment (cited above) at 1, n.1 (citing Michael DeYoanna, Dangerous Air due to Wildfires Has Risen across Colorado in Last Five Years, Sept. 28, 2021, <https://www.kunc.org/health/2021-09-28/dangerous-air-due-to-wildfires-has-risen-across-colorado-in-last-five-years>), n.4 (citing Bad Air Day, NIH News in Health, July 2011, <https://newsinhealth.nih.gov/2011/07/bad-air-day>; The Terrible 10: Air Pollution’s Top 10 Health Risks, American Lung Assn., Apr. 6, 2017, <https://www.lung.org/blog/air-pollutions-top-10-health-risks>; Health and Environmental Effects of Particulate Matter (PM), U.S. Environmental Protection Agency, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>).

¹⁸ National Oceanic and Atmospheric Administration, National Centers for Environmental Information, The Impact of Weather and Climate Extremes on Air and Water Quality (summarizing and reviewing Thomas C. Peterson, Thomas R. Karl, et al. (2014) Changes in weather and climate extremes: State of knowledge relevant to air and water quality in the United States, Journal of the Air & Waste Management Assn., 64:2, 184-197, DOI: 10.1080/10962247.2013.851044), <https://www.ncdc.noaa.gov/news/impact-weather-and-climate-extremes-air-and-water-quality>.

¹⁹ Anenberg, S.C., Haines, S., Wang, E. et al. Synergistic health effects of air pollution, temperature, and pollen exposure: a systematic review of epidemiological evidence. Environ Health 19, 130 (2020), <https://doi.org/10.1186/s12940-020-00681-z> (reviewing studies, and finding that “an association was generally observed for synergistic effects of heat and air pollution exposure”).

²⁰ DHHS (NIOSH) Publication No. 2016-106 at 11.

²¹ DHHS (NIOSH) Publication No. 2016-106 at 57 (citations omitted).

²² DHHS (NIOSH) Publication No. 2016-106 at 128–129 (citations omitted).

²³ Anenberg, S.C., et al., Synergistic health effects of air pollution, temperature, and pollen exposure: a systematic review of epidemiological evidence. Environ Health 19, 130 (2020), <https://doi.org/10.1186/s12940-020-00681-z> (reviewing studies, and finding that “an association was generally observed for synergistic effects of heat and air pollution exposure”).

increased risk conditions. The NIOSH publication expressly notes that “[w]orking for shorter time periods and taking appropriate rest breaks slows down the body’s heat accumulation,”²⁴ and recommends, as an “control” to lessen heat stress, “limiting or modifying the duration of exposure time,” including but not limited to by increasing break frequency.²⁵

Clothing and equipment that varies substantially from traditional one-layer work clothing affects the heat exchange rate between clothing and skin, which also necessitates adjustment in determining overall heat stress.²⁶ The rule accounts for the types of clothing, equipment, or gear likely to increase this heat stress: vapor-barrier clothing or personal protective equipment (PPE) of an additional layer over regular clothing or covering most of the head and neck (i.e., PPE beyond a cloth face mask).²⁷ The rule does not require compliance with increased risk conditions requirements for an employee’s own chosen type of clothing or equipment (e.g., their preference to wear a sweatshirt instead of a t-shirt), only that which the employer requires or which is required based on safety protocols for equipment used or work performed (e.g., pesticide application requiring employees to wear a protective hood and coveralls).

The final increased risk condition in the rule is heat “acclimatization,” defined as “physiological changes that occur in response to a succession of days of exposure to environmental heat stress and reduce the strain caused by the heat stress of the environment; and enable a person to work with greater effectiveness and with less chance of heat injury.”²⁸ Acclimatization is a significant factor in protecting against heat-related illness, injury, and death. In a study of OSHA citations, lack of acclimatization in a heat safety program was the “most commonly missing” element, and the element “most clearly associated with worker death.”²⁹ Rule 3.4 defines workers with increased heat risk due to acclimatization as those in their first four days of work (or first four days of work in over a month, for returning workers) — a standard supported by a study finding that 80% of heat-related injuries were in workers’ first four days.³⁰

5. Rule 3.5 and 3.6: Training and Safety Procedures

Rule 3.5 covers minimum safety procedures required if the temperature is expected to reach a threshold in the rules at any point in the year, to ensure employer preparation for compliance when needed. Rather than require employers to draft their own safety procedures, the rules detail key requirements that must be included: regular communication with employees by voice, observation, and/or electronic means (Rule 3.5.1); monitoring and receiving reports of signs and symptoms of heat illness or injury, including identifying the individuals responsible for such monitoring at each worksite (3.5.2); responding to possible heat illness or injury, including by relief from duty, first aid, and/or emergency response (3.5.3); emergency response, including immediate contact to emergency personnel, and transportation of an ill or injured

²⁴ DHHS (NIOSH) Publication No. 2016-106 at 93 (citing Dukes-Dobos FN, Henschel A [1973]. Development of permissible heat exposure limits for occupational work. ASHRAE, Journal of the American Society of Heating Refrigerating and Air-Conditioning Engineers 57-62.)).

²⁵ DHHS (NIOSH) Publication No. 2016-106 at 75 (citing OSHA-NIOSH [2011]. OSHA-NIOSH infosheet: protecting workers from heat illness. U.S. Dep’t of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2011-174, <http://www.cdc.gov/niosh/docs/2011-174/>).

²⁶ DHHS (NIOSH) Publication No. 2016-106 at 15–16.

²⁷ DHHS (NIOSH) Publication No. 2016-106 at 22 (“Heat stress is also likely to be increased with any two-layer protective ensembles or any effective single-layer vapor barrier system for protection against toxic products, unless some form of auxiliary cooling is provided” (citing Goldman RF [1978]. Prediction of human heat tolerance. In: Folinsbee LJ, ed. Environmental stress: individual human adaptations. New York: Academic Press; Goldman RF [1985a]. Heat stress in industrial protective encapsulating garments. In: Levine SP, Martin WF, eds. Protecting Personnel at Hazardous Waste Sites. Vol. 10. Boston: Butterworth Publishers).

²⁸ DHHS (NIOSH) Publication No. 2016-106 at xix.

²⁹ DHHS (NIOSH) Publication No. 2016-106 at 12, 33 (citing Arbury S, Jacklitsch B, Farquah O, Hodgson M, Lamson G, Martin H, Profitt A, Office of Occupational Health Nursing OSHA [2014]. Heat illness and death among workers: United States, 2012–2013. MMWR Morb Mortal Wkly Rep 63(31): 661–665).

³⁰ Written comment by Whitney Pennington, MPH, Outreach Coordinator, High Plains Intermountain Center for Agricultural Health and Safety, October 4, 2021 at 4 (identifying role of acclimatization in preventing heat illness and injury, citing California OSHA study of heat injuries showing that 80% occurred during the worker’s first four days of work) (citing Prudhomme, J.C., & Neidhardt, A. (2006). Memorandum: Cal/OSHA Investigation of Heat Related Illnesses. California Division of Occupational Safety and Health. <https://www.dir.ca.gov/dosh/heatillnessinvestigations-2005.pdf>).

employee to a place those personnel can reach (3.5.4); and advising employees of preventive measures including access to water, shade, and cool-down rest breaks whenever needed to alleviate heat illness or injury symptoms (3.5.5).

6. Rule 3.6: Training

Rule 3.6 sets forth requirements for heat safety training, and provides suggested training resources. The NIOSH publication identifies subjects for training which are, in large part, incorporated here.³¹ Three suggested training resources are provided, published by NIOSH Centers for Agricultural Safety and Health, which employers may use to fulfill their obligations to provide workers education about generally applicable training topics (*e.g.*, heat illness and injury signs and symptoms).³² Employers must train employees on specific requirements of these Rules, and on their own site-specific procedures for Rule compliance, including in the preferred language of employees not fluent in English. Several of the Division’s suggested training resources are also in Spanish, and employers can request assistance from the Division for materials in other languages. As with safety requirements, training must be conducted if the temperature is expected to reach the heat threshold at any point during the year, and at least annually thereafter, to ensure that the messages are emphasized before the hottest season each year. The Rules take May 1, 2022, necessitating that employers conduct such training in advance of temperatures exceeding the 80- and 95-degree threshold that may be expected in summer 2022.

C. Rule 4: Access to Key Service Providers.

Rule 4.1 details rulemaking authority for service provider access rules, including purposes stated in ALRRA:

To ensure that agricultural workers have meaningful access to services, the director of the division shall promulgate rules regarding additional times during which an employer may not interfere with an agricultural worker’s reasonable access to key service providers, including periods during which the agricultural worker is performing compensable work, especially during periods when the agricultural worker is required to work in excess of forty hours per week and may have difficulty accessing such services outside of work hours.³³

In accord with this mandate, the rules provide service provider access opportunities beyond the on-site access rights already present in ALRRA — which, as comments to the Division emphasize, are broad,³⁴ and are tailored to the issues the statute targets: agricultural workers’ difficulty accessing services when working long hours, when it would cost them pay, and when efforts to communicate with them at the worksite may fail.

Rule 4.2 details rights to *communication* access to service providers, which the Division finds critical to a key part of the ALRRA rulemaking mandate: assuring services provider access for those with long enough hours to create “difficulty accessing such services outside of work hours” (as quoted above). Thus, the rule requires employers to ensure, during rest and meal periods, employee access to quiet, private space with internet and phone service, to facilitate access (*e.g.*, for video or phone appointments, scheduling, or follow-up with providers), with additional requirements for workers

³¹ The NIOSH publication recommends training in the following areas for employees potentially being exposed to heat stress, and their supervisors: “(1) Heat stress hazards; (2) Predisposing factors; (3) Relevant signs and symptoms of heat injury and illness; (4) Potential health effects of excessive heat stress; (5) General first aid as well as worksite-specific first aid procedures; (6) Proper precautions for work in heat stress areas; (7) Workers’ responsibilities for following proper work practices and control procedures to help protect the health and provide for the safety of themselves and their fellow workers, including instructions to immediately report to the supervisor the development of signs or symptoms of heat related illnesses; (8) The effects of therapeutic drugs, over-the-counter medications, alcohol, or caffeine that may increase the risk of heat injury or illness by reducing heat tolerance; (9) The purposes for and descriptions of the environmental and medical monitoring programs and the advantages to the worker of participating in these surveillance programs; (10) If necessary, proper use of protective clothing and equipment; (11) Cultural attitude toward heat stress. [...]” DHHS (NIOSH) Publication No. 2016-106 at 7-8.

³² These Centers were established “as part of a Centers for Disease Control and Prevention (CDC) / NIOSH Agricultural Health and Safety Initiative in 1990 [...] to conduct research, education, and prevention projects to address the nation’s pressing agricultural, forestry and fishing health and safety problems.” Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH Extramural Research and Training Programs - Research, Training Grants & State Surveillance - Centers for Agricultural Safety and Health, <https://www.cdc.gov/niosh/oe/agctrhom.html> (last reviewed Nov. 30, 2021).

³³ C.R.S. § 8-13.5-202(1)(c).

³⁴ *E.g.*, written comment by Colorado Farm Bureau, September 28, 2021 (by Carlyle Currier, President), at 3–4.

with employer-provided housing. The rule allows employers to provide alternate meaningful access if communication requirements cannot be met (e.g., if the area lacks cell service). Employers are must promptly provide to employees any communications for them that the employer receives, such as by mail. For those whose work over 40 hours per week may cause increased “difficulty accessing such services outside of work hours” (as the ALRRA instructs, above), employers must let employees extend one existing 30-minute rest or meal period per week to up to 60 minutes (the extra time can be unpaid) to facilitate employee communication with providers during the providers’ hours of operation; employees must give employers at least 24 hours’ notice (72 hours for range workers) of their wish to extend a break in that manner.

Rule 4.3 requires employers to provide additional compensated break to employees working especially long hours, based on the ALRRA mandate for this rulemaking to supplement the statutory requirement of service provider access during *unpaid* time (e.g., when on breaks or off-duty), by adding “additional times ..., including periods during which the agricultural worker is performing compensable work, especially” those whose long hours create “difficulty accessing such services outside of work hours.”³⁵ Accordingly, under Rule 4.3 provides employees working 60 or more hours in a workweek with one compensated 60-minute break, and those working 70 or more hours with two such breaks. If the employer had no reason to believe an employee would work such hours, and thus did not provide such breaks during that workweek, it may instead provide the required breaks in the following workweek. Employees may use this time for direct service provider access (e.g., appointments) or for other personal use (e.g., rest or errands) that indirectly but substantially can facilitate service provider access at other times. Because it is not *required* that employees use this time for direct service provider access, employers cannot require documentation or information about how such time is used.

D. Rules 5: Enforcement, including Retaliation/Interference Prohibitions (5.1), Notice of Rights (5.2), and Complaints and Investigations (5.3).

Rule 5 specifies the Division’s investigative authority and procedures for violations of these rules, prohibits retaliation related to exercising rights under these rules, identifies how the Colorado WARNING Rules detail relevant complaint procedures, and lists methods of compliance with ALRRA notice requirements.³⁶

V. EFFECTIVE DATE. Rule 6 sets the effective date of these rules, May 1, 2021 — a date chosen to give employers time to implement the new requirements and adjust practices as needed, while ensuring that protections are in place before the mid-year period that most implicates the need for various of these new requirements, due to both hotter weather and the influx of more agricultural labor to Colorado by late spring and summer.



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Colorado Department of Labor and Employment

December 3, 2021

Date

³⁵ C.R.S. § 8-13.5-202(1)(c).

³⁶ C.R.S. § 8-13.5-202(3).